

### REMARKS

This communication responds to the Office Action of September 6, 2007, which was made final.

By this communication, claims 1, 3-6, 8, 12-13, 15, 17, 18, 22, 26, 33-34 and 36 are amended, and claims 2, 7, 11, 14, 16 and 35 are canceled. Claim 9 was previously canceled. Therefore, claims 1, 3-6, 8, 10, 12, 13, 15, 17-34 and 36 are pending. No new matter has been added by the claim modifications.

Reconsideration and allowance are requested.

#### Rejection under 35 U.S.C. § 103

Claims 1-36 were rejected under 35 U.S.C. § 103(a) over Behnke (US Patent 5,520,641) (hereinafter "Behnke") in view of U.S. Patent Publication 2001/0041872 to Paul, Jr. (hereinafter "Paul"). Claims 1-36 were rejected under 35 U.S.C. § 103(a) over Ouchi (US Patent 6,210,377) (hereinafter "Ouchi"), and further in view of Paul. For at least the following reasons, the cited Behnke and Paul combination and Ouchi and Paul combination do not render the claims obvious, and the § 103(a) rejections are traversed.

#### I. Claims 1, 8, 17 and 18 are not obvious in view of the cited references

A membrane having a "passage" and at least one "elastic, porous but non-permeable space" as claimed in claims 1, 8, 17 and 18 is not disclosed or suggested in the cited references when viewed alone or in combination.

#### Behnke in view of Paul

The IV injection and sampling site in Behnke is a septum with multiple openings. In the septum, it is "preferred that the openings 48 be located directly above the bore 46 and open into the same to facilitate insertion of the penetrators through the bore 46." (*Behnke*, col. 5, lines 9-11). "The arrangement is such that [ ] a blunt cannula C is introduced through any one of the openings 48 in the septum 26. . ." (*Behnke*, col. 5, lines 12-13). Although Behnke discloses openings in a septum, Behnke does not disclose a membrane comprising at least one "elastic,

porous but non-permeable space” not intended to receive a cannula as recited in amended claims 1, 8, 17 and 18.

The medical fluid flow control valve in Paul includes a seal 26 with a perforation 34. As provided by the figures in Paul, perforation 34 can have a y-shape (Figs. 5A-C) or an oval-shape (6A-C), each of which is penetrable by catheter 20. (*See Paul, page 5, paragraph 52*). Because perforation 35 is penetrable by catheter 20, Paul does not disclose the claims 1, 8, 17 and 18 recitation of a membrane comprising an “elastic, porous but non-permeable space.”

Moreover, modifying openings 48 in Behnke to make them non-permeable to prevent a cannula from penetrating bore 46 is contrary to the teachings of Behnke in which “it is further preferred that the openings 48 be located directly above the bore 46 and open into the same to facilitate insertion of the penetrators through the bore 46.” (*Behnke, col. 5, lines 9-11*).

Modifying the perforation 34 in Paul to make it non-permeable would render seal 26 inoperable because no passage would be provided in seal 26 to allow catheter 20 to penetrate.

Accordingly, none of the cited references suggests openings or perforations in a membrane that may be modified to be non-permeable, such a modification is contrary to the teachings in Behnke and would render the seal 26 in Paul inoperable for its intended purpose, and the combination of Behnke and Paul does not disclose or suggest the recitations of independent claims 1, 8, 17 and 18.

#### Ouchi in view of Paul

The treatment accessory for an endoscope in Ouchi includes a forceps tap 2600 with packing 2721 having configurations including a slit 2723 (Fig. 83), double slits 2725, 2726 (Fig. 84), a combination of two vertical slits 2725, 2726 and a horizontal slit 2723 (Fig. 85), a combination of a vertical slit 2725 and a through hole 2727 (Fig. 86), and a combination of two through holes 2727, 2728 (Fig. 87). Each of the slit/hole configurations disclosed in Ouchi allow treatment accessories to penetrate the tap and Ouchi does not disclose a membrane comprising an “elastic, porous but non-permeable space” from claims 1, 8, 17 and 18.

As discussed above, Paul does not disclose or suggest a membrane comprising an “elastic, porous but non-permeable space,” and modifying perforation 34 to make it non-permeable would render it inoperable for its intended purpose of providing a slit/hole for penetrating the tap.

Further, nothing in Ouchi suggests that slits or through holes may be modified to make them elastic, porous but non-permeable. Accordingly, neither Ouchi nor Paul indicates that slits, through holes or perforations may be configured to be non-permeable, and the combination of Ouchi and Paul does not disclose or suggest the recitations of claims 1, 8, 17 and 18.

II. Claim 22 is not obvious over the cited references

The cited references, when viewed alone or in combination, do not disclose or suggest a membrane comprising “compressible spaces not penetrable by the cannula [that] are formed from porous but non-permeable spaces in the elastic material” arranged so that they are “generally axially symmetrical on both sides of the long main axis” on a membrane as claimed in claim 22.

Behnke in view of Paul

Behnke discloses a:

pattern of openings 48 used in a septum 26 . . . [with] two generally circular patterns. The inner circle includes four openings 48 spaced equidistant from the center of the septum 26 and offset about 90° from its neighbors, as illustrated by the angle D in Fig. 6. The outer circle includes eight openings 48 also located equidistant from the central opening 48 with each opening 48 offset from its neighbors by about 45°, as illustrated by the angle C in Fig. 6.

(*Behnke*, col. 4, lines 42-51). Even if Behnke discloses patterns of openings 48, Behnke does not disclose that openings are not penetrable by a cannula as recited in claims 8 and 22. Rather, as discussed above, each and any of the openings 48 in septum 26 is penetrable by cannula C. (*See Behnke*, col. 5, lines 9-13). Therefore, for the reasons set forth above (including in relation to part I of this response), Behnke does not disclose or suggest the claim 22 membrane comprising a number of elastic, porous but non-permeable spaces not penetrable by the cannula arranged generally asymmetrically on both sides of the passage long main axis.

Paul does not disclose or suggest spaces formed of an elastic, porous but non-permeable material (at least for the reasons set forth in relation to pat I of this response), or that compressible spaces may be arranged near perforation 34, and Paul does not disclose or suggest the recitations of claim 22.

Moreover, for the reasons set forth above, the combination of Behnke and Paul does not disclose or suggest the recitations of claim 22.

Ouchi in view of Paul

Ouchi does not disclose a membrane comprising a number of compressible spaces not penetrable by a cannula as provided in claim 22; and for the reasons set forth above in relation to part I of this response, Ouchi does not suggest that slits or through holes may be modified to form compressible spaces not penetrable by a cannula.

Paul does not disclose or suggest the recitations of claim 22 for the reasons set forth above.

Accordingly, the combination of Ouchi and Paul does not disclose or suggest the recitations of claim 22.

III. Claims 26, 33 and 36 are not obvious over the cited references

Viewed alone or in combination, the cited references do not disclose or suggest the "membrane" as claimed in claims 26, 33 and 36. Specifically, unlike the cited references, independent claims 26, 33 and 36 recite that the membrane includes another passage or spaces "not penetrable by the cannula."

Behnke in view of Paul

For Behnke and Paul, each of openings 48 and perforation 34, respectively, are penetrable by cannula C/20, and neither reference suggests openings 48 or perforation 34 may be modified so that they are not penetrable by cannula C/20.

Modifying openings 48 in Behnke to make them not penetrable by a cannula is contrary to the teachings of Behnke in which "it is further preferred that the openings 48 be located directly above the bore 46 and open into the same to facilitate insertion of the penetrators through the bore 46." (*Behnke*, col. 5, lines 9-11). Further, modifying the perforation 34 in Paul to make it not penetrable by a catheter would render seal 26 inoperable because no passage would be provided in seal 26 to allow catheter 20 to penetrate. Accordingly, providing a membrane comprising spaces not penetrable by a cannula as claimed in claims 33 and 36 is not suggested because such a modification would be contrary to the teachings in Behnke, and modifying the seal 26 in Paul would render it inoperable for its intended purpose. Accordingly, the combination of Behnke and Paul does not disclose or suggest the recitations of claims 26, 33 and 36.

Ouchi in view of Paul

For Ouchi and Paul, each of slits, through holes and perforations are penetrable by a treatment accessory/cannula. There is no indication in either Ouchi or Paul that such cannula-accessible openings may be modified to make them non-cannula accessible. Accordingly, Ouchi and Paul, viewed alone or in combination, do not disclose or suggest the recitations of claims 26, 33 and 36.

Dependent Claims

Dependent claims 3-6, 10, 12, 13, 15, 19-21, 23-25 27-32, and 34 depend directly or indirectly from their respective independent claims 1, 8, 17, 18, 22 and 33, and are patentable for at least the reasons set forth above, and further in view of their additional recitations.

For at least the preceding reasons, reconsideration and withdrawal of the § 103(a) rejections over Behnke, Ouchi and Paul are requested.

Conclusion

This response is being submitted on or before February 6, 2008, with the required fee of \$460.00 for a two-month extension of time, along with a Request for Continued Examination with the required fee of \$810.00 making this a timely response. It is believe that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

The application now stands in allowable form, and reconsideration and allowance are requested.

Respectfully submitted,

**DORSEY & WHITNEY LLP**  
**Customer Number 25763**

Date: Feb. 6, 2008

By: Bridget Hayden  
Bridget Hayden, Reg. No. 56,904  
(612) 492-6867